

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4428 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

PARMABEN PITHABHAI MAKWANA

Versus

NEW INDIA INSURANCE CO.

Appearance:

1. Special Civil Application No. 4428 of 2003
MS MEGHA R CHITALIA for Petitioner No. 1
MR HASMUKH THAKKER for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 12/09/2003

ORAL JUDGEMENT

Heard the learned advocates. Learned advocate
Ms. Megha Chitalia appearing for the petitioner has

submitted that the petitioner is a widow, who had received compensation as she had met with an accident. Substantial amount of compensation has been deposited with Indian Bank in pursuance of an order passed by the MACT, Rajkot, in M.A.C. Petition No. 1759/98. It is the case of the petitioner that the petitioner is having further complications on account of the accident, which had taken place. So as to get herself cured, she requires to undergo an operation and for that purpose she would require minimum Rs. 20,000/- and, therefore, she had submitted an application to the Tribunal with a prayer that the entire amount deposited with Indian Bank be permitted to be withdrawn by her so that from the said amount she can pay to the concerned doctor for getting herself operated but the said application has been rejected by the Tribunal.

2. Learned advocate Shri Hasmukh Thakker appearing for the respondent insurance company has submitted that the Tribunal has rightly rejected the application because, even according to the Tribunal, the amount, which is lying with the bank, is not sufficient to meet with the expenditure of the operation. It has been submitted by the learned advocate that if the said amount is permitted to be withdrawn, the petitioner would not be in a position to maintain herself afterwards. He has tried to justify the order passed by the Tribunal.

3. I have heard the learned advocates and have gone through the impugned order as well as the certificate issued by Dr. Dinesh Chauhan. Upon perusal of the record pertaining to the case, it appears that the petitioner requires to be operated. It appears that the petitioner is unable to walk properly and if she is not operated, she would live a very miserable life. It cannot be doubted that the amount awarded to the petitioner has been directed to be deposited with the bank in the interest of the petitioner because the Tribunal was keen to see that the petitioner does not squander away the amount received by her in pursuance of the claim petition filed by her. Looking to the facts of the case, in my opinion, it would be important for the petitioner to get cured and to move freely after getting herself operated. This appears to be a genuine need of the petitioner and, therefore, in my opinion, the petitioner should be permitted to withdraw the amount, which has been deposited with Indian Bank in pursuance of an order passed by MACT, Rajkot, in Claim Petition No. 1759/98.

4. Looking to the facts of the case, the impugned

order dated 9.9.2002 passed below Ex. 30 in MACP No. 1759/98 is quashed and set aside and the petitioner is permitted to withdraw the amount. It is directed that the said amount shall be paid by Indian Bank to the petitioner by an account payee cheque.

The petition stands disposed of as allowed. Rule is made absolute with no order as to costs.

(A.R. Dave, J.)

(hn)